

164 FERC ¶ 61,058  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

Carolina Solar Power, LLC

Docket No. ER18-1343-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND  
AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued July 27, 2018)

1. In this order, we grant Carolina Solar Power, LLC (Carolina Solar) authority to make wholesale sales of electric energy and capacity at market-based rates, subject to the limitations contained in its proposed tariff, effective June 11, 2018, as requested. We also grant Carolina Solar's request for certain waivers commonly granted to market-based rate sellers. Also, as discussed below, we grant Carolina Solar's request for authorization to make affiliate sales at market-based rates pursuant to a competitive solicitation process that we find satisfies the Commission's affiliate abuse concerns.
2. Additionally, we find that Carolina Solar meets the criteria for a Category 2 seller in the Southeast region and a Category 1 seller in the Central, Southwest, Southwest Power Pool, Northeast and Northwest regions and is so designated.<sup>1</sup>

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<sup>1</sup> See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, FERC Stats. & Regs. ¶ 31,374, at P 320 (2015), *order on reh'g*, Order No. 816-A, FERC Stats. & Regs. ¶ 31,382 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

## **I. Background**

3. On April 11, 2018, as amended on May 30, 2018, Carolina Solar submitted an application for market-based rate authority with an accompanying tariff providing for the sale of energy and capacity at market-based rates under a limited set of circumstances.

4. Carolina Solar states that it was formed for the exclusive purpose of developing a new solar project and that it will make sales from the project pursuant to the terms of one or more 20-year power purchase agreements (PPA) if Carolina Solar is selected as a winning bidder in a competitive procurement for renewable energy pursuant to North Carolina House Bill 589 (HB 589). The procurement will be supervised by the North Carolina Utilities Commission (North Carolina Commission) and an independent administrator appointed by the North Carolina Commission.<sup>2</sup> As an affiliate of Duke Energy Carolinas, LLC (Duke Carolinas) and Duke Energy Progress, LLC (Duke Progress) (together, the Duke Utilities), Carolina Solar requests authorization to make sales at market-based rates in the Duke Utilities' balancing authority areas, where the Duke Utilities and their affiliates with market-based rate authority are currently mitigated. In addition, because Carolina Solar would be making sales to its affiliates Duke Carolinas and/or Duke Progress, Carolina Solar also requests authorization to make affiliate sales.

5. Carolina Solar states that HB 589 requires that the Duke Utilities procure a total of 2,660 megawatts (MWs) of renewable energy capacity over a 45-month period via annual requests for proposals (RFP).<sup>3</sup> Carolina Solar states that the RFPs provide for the development of new renewable energy projects that are placed in service after the date of the initial solicitation.<sup>4</sup> Carolina Solar states that the Duke Utilities are planning four RFPs, or "tranches," the first of which is expected to begin in September 2018.<sup>5</sup> Pursuant to HB 589, the cost of the renewable energy procured through the solicitations will be capped at the Duke Utilities' 20-year forecast of their respective avoided cost rates at the

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<sup>2</sup> April 11 Filing at 1-2.

<sup>3</sup> *Id.* at 4; *see also id.*, Attachment C, HB 589, N.C. Gen. Stat. § 62-110.8(a).

<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> *Id.* at 3, 15.

time of each solicitation.<sup>6</sup> Additionally, Carolina Solar states that HB 589 provides that no more than 30 percent of the Duke Utilities' competitive procurement requirement may be satisfied through projects in which the Duke Utilities or their affiliates have an ownership interest at the time of bidding.<sup>7</sup> If the 30 percent cap is met, no additional projects owned by the Duke Utilities or a Duke affiliate at the time of bidding will be accepted, regardless of the ranking and cost effectiveness of those proposals.<sup>8</sup> Carolina Solar states that the 30 percent cap will be applied on a combined basis across the entirety of the RFPs,<sup>9</sup> but in accordance with HB 589, will not apply to third-parties' asset acquisitions proposals.<sup>10</sup>

6. Carolina Solar requests authority to make sales at market-based rates under a limited set of circumstances and waiver of the Commission's affiliate sales restrictions to permit any sales that it would be making to the Duke Utilities under RFPs issued pursuant to HB 589.

## **II. Notice of Filings**

7. Notice of Carolina Solar's filings was published in the *Federal Register*,<sup>11</sup> with interventions and protests due on or before June 11, 2018. None was filed.

8. Notice of Carolina Solar's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,<sup>12</sup> with interventions and protests due on or before May 7, 2018. None was filed.

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<sup>6</sup> *Id.* at 5; *see also id.*, Attachment C, HB 589, N.C. Gen. Stat. § 62-110.8(b)(2) ("To ensure the cost-effectiveness of procured new renewable energy resources, each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement . . . consistent with the [North Carolina] Commission-approved avoided cost methodology.").

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 15.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 19.

<sup>11</sup> 83 Fed. Reg. 16,851; 83 Fed. Reg. 26,276 (2018).

<sup>12</sup> 83 Fed. Reg. 17,546 (2018).

### **III. Discussion**

9. As discussed below, we grant Carolina Solar authority to make wholesale sales of energy and capacity at market-based rates, subject to the limitations in its market-based rate tariff, effective June 11, 2018, as requested. We also find that the competitive solicitation process established by HB 589 that Carolina Solar describes satisfies the Commission's concerns regarding affiliate abuse. Accordingly, we grant Carolina Solar's request for authorization to make affiliate sales to the Duke Utilities at market-based rates pursuant to the competitive solicitation process described in its filing.

#### **A. Market-Based Rate Authorization**

10. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>13</sup>

##### **1. Horizontal Market Power**

11. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>14</sup> The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>15</sup>

12. Carolina Solar does not seek general market-based rate authority. Carolina Solar's proposed market-based rate tariff is limited to wholesale sales made pursuant to rates and terms set forth in one or more PPAs entered into pursuant to and in accordance with the North Carolina Competitive Procurement of Renewable Energy Program, under HB 589. Carolina Solar states that it currently neither owns nor controls any generation facilities; however, if the Duke Utilities' uncommitted generation capacity is attributable to Carolina Solar as an affiliate of the Duke Utilities, Carolina Solar concedes that it would not pass the indicative screens for the Duke Utilities' balancing authority areas. However, Carolina Solar argues that the Duke Utilities' uncommitted capacity should not be considered when evaluating whether Carolina Solar has the ability to exercise horizontal market power for purposes of its market-based rate authorization because the Duke Utilities and their affiliates (including Carolina Solar) currently own or control no renewable capacity that is eligible to participate in the RFPs. Thus, Carolina Solar argues that the Duke Utilities' and their affiliates' market share in uncommitted or available renewable energy generation that is eligible to participate in the RFPs is zero. Carolina

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<sup>13</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>14</sup> *Id.* P 62.

<sup>15</sup> *Id.* PP 33, 62-63.

Solar further states that because the fossil, nuclear, and hydroelectric generation owned or controlled by the Duke Utilities is ineligible to participate in the RFPs, it should not be attributed to Carolina Solar for purposes of assessing Carolina Solar's ability to exercise market power in the RFPs. As discussed below, we will grant Carolina Solar's request for limited market-based rate authority under the narrow set of circumstances presented here.

13. Typically, a seller that is found or presumed to have market power in a market may adopt the Commission's default cost-based mitigation for sales in that market.<sup>16</sup> However, the Commission has envisioned certain limited circumstances where a seller with market power might be authorized to make unmitigated market-based sales. In Order No. 697-A, the Commission noted that it has long held that long-term markets may be presumed to be competitive absent barriers to entry and stated that "[e]ven if a seller is found to have market power in the short-term, that market power can be mitigated or eliminated by the meaningful opportunity for other sellers to enter the market in order to compete with the seller and drive down prices."<sup>17</sup> The Commission stated that, "[g]iven adequate time, notice and the absence of entry barriers, proposals for new infrastructure will emerge in response to price signals."<sup>18</sup> The Commission noted that the indicative screens and delivered price test only examine market power in the short term, and said that it would allow sellers to make case-by-case demonstrations that they do not have market power with respect to particular long-term contracts.<sup>19</sup> The Commission provided that a seller who would otherwise fail the Commission's market-based rate tests "may file with the Commission under FPA section 205, on a case-by-case basis, a request for contract-specific market-based rates based on a demonstration that the seller does not have market power with respect to the specific long-term contract being filed."<sup>20</sup> The Commission stated that the seller "must show that a buyer under a long-term contract has viable alternatives including the entry of an appropriate amount of third-party newly-constructed resources during the relevant future period as an alternative to purchasing under the contract at issue."<sup>21</sup> The Commission also observed that "sellers who identify a specific buyer for a proposed contract will be better able to provide the Commission with

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<sup>16</sup> See 18 C.F.R. § 35.38(a) (2017).

<sup>17</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 279.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* P 280.

<sup>20</sup> *Id.* P 281.

<sup>21</sup> *Id.* P 282.

an understanding of the viable and comparable alternatives that the particular buyer may have.”<sup>22</sup>

14. Carolina Solar states that it intends to make sales at market-based rates to a specific buyer (Duke Carolinas or Duke Progress within the Duke Utilities’ balancing authority areas) only if Carolina Solar is awarded a PPA through the competitive solicitation process approved by the legislative and regulatory processes in North Carolina pursuant to HB 589. Under HB 589, the solicitations are limited to facilities with a nameplate capacity rating of 80 MW or less that are placed in service after the date of the initial procurement.<sup>23</sup> According to Carolina Solar, a total of 9,310 MW of potential new solar generation is seeking to interconnect to one of the Duke Utilities, well in excess of the target total procurement of 2,660 MW. Moreover, based on the information Carolina Solar provided, only 210 MW, or 2.3 percent of the 9,310 MW of the proposed new solar generation, is affiliated with the Duke Utilities.<sup>24</sup> Further, it appears that the competitive solicitations will have robust participation from third parties, as evidenced by Carolina Solar’s representation that more than 100 non-affiliated parties have registered through the Independent Administrator’s website as potential participants.<sup>25</sup> These indicators of competitiveness suggest that neither Carolina Solar nor its affiliates can raise barriers to entry to restrict the participation of newly constructed generation from non-affiliated sellers.

15. In addition, certain features of this competitive solicitation process, in particular the 30 percent cap on affiliate participation, the 20-year term of the resulting PPAs, and the requirement that all eligible generation must be procured from resources that are placed in service after the date of the electric utility’s initial competitive procurement,<sup>26</sup> provide evidence that there is meaningful opportunity for other sellers to enter the market in order to compete and provide the purchaser with viable and comparable alternatives. The fact that the resulting contracts will be the result of a competitive procurement will also help ensure just and reasonable rates. Finally, the procurement is in response to a state-mandated program and the RFP process is designed to be a rigorous, fair, and open process that is administered by an independent evaluator and overseen by the North

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<sup>22</sup> *Id.*

<sup>23</sup> April 11 Filing, Attachment C, HB 589, N.C. Gen. Stat. § 62-110.8(a).

<sup>24</sup> May 30 Amendment at Attachment 3.

<sup>25</sup> *Id.* at 3 (asserting that the “extensive stakeholder participation in the legislative process and the [North Carolina Commission’s] regulatory processes, together with this level of registration strongly suggests there will be robust participation in the RFP”).

<sup>26</sup> Proposals for the first tranche must be capable of being placed in service prior to January 1, 2021. April 11 Filing, Attachment 3 of Attachment E, at 5 n.4.

Carolina Commission. These factors provide additional assurance as to the competitive nature of this particular solicitation, which will safeguard against the exercise of market power. In addition, the RFP will be a pay-as-bid rather than a single, price clearing auction, which will limit any seller's ability to exercise market power to influence prices because the price received by each winning seller will equal the seller's bid rather than the highest-priced bid accepted.

16. Thus, we find that the PPAs that result from this competitive solicitation are analogous to the type of long-term contract that the Commission discussed in Order No. 697-A. Further, the nature of this competitive solicitation process makes it likely that the buyer can be expected to have access to viable and comparable alternatives including third-party newly constructed resources, as contemplated by Order No. 697-A. While Carolina Solar does not have a long-term PPA for Commission review, based on the specific facts presented here, we find that there is no basis to conclude that Carolina Solar will have market power with respect to any PPA it may be awarded under this particular competitive procurement.<sup>27</sup> Specifically, our finding is based on the following cumulative set of facts: (1) the competitive solicitation process is for long-term PPAs for new generation not already in service, providing a meaningful opportunity for new generation to enter the market to compete and provide the purchaser with viable alternatives to purchasing from Carolina Solar; (2) there appear to be numerous potential non-affiliated competitors interested in the RFPs; (3) new generation owned by the Duke Utilities and their affiliates cannot account for more than 30 percent of the total 2,660 MWs being procured, ensuring participation by competitors; (4) the RFPs are pay-as-bid solicitations; and (5) the PPAs will result from a state-mandated solicitation process administered by an independent evaluator.<sup>28</sup> Based on Carolina Solar's representations, we find that Carolina Solar satisfies the Commission's requirements for market-based rate authority regarding horizontal market power for any resulting PPAs. Carolina Solar must notify the Commission if there is a change to any of the facts and circumstances that the Commission relied upon in making this finding.<sup>29</sup>

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<sup>27</sup> Given our findings, we need not address Carolina Solar's argument that renewable energy should be viewed as a distinct product for purposes of this procurement.

<sup>28</sup> We also note that the cost cap will be set consistent with the North Carolina Commission-approved avoided cost methodology and any resale of the procured MWs will be subject to the Duke Utilities' existing mitigation, further limiting any risk of market power abuse.

<sup>29</sup> 18 C.F.R. § 35.42 (2017); *see also Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

## 2. Vertical Market Power

17. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file or that the seller has received waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1) or satisfies the requirements for blanket waiver under 18 C.F.R. § 35.28(d)(2).<sup>30</sup> Carolina Solar states that it does not and will not own or operate any transmission facilities other than discrete interconnection facilities.<sup>31</sup> Carolina Solar states that transmission facilities (including limited interconnection facilities) that are owned by affiliates either (1) are subject to OATTs on file with the Commission, (2) are under the operational control of an independent system operator or regional transmission operator, (3) have received a waiver from the Commission under 18 C.F.R. § 35.28(d)(1), or (4) would qualify for a blanket waiver under 18 C.F.R. § 35.28(d)(2).<sup>32</sup>

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>33</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities, and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>34</sup> The

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<sup>30</sup> See *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367, at P 57, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015) (waiving the OATT requirements of 18 C.F.R. § 35.28, the Open Access Same-Time Information System requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities); *see also Oildale Energy, LLC*, 153 FERC ¶ 61,013, at PP 12-14 (2015).

<sup>31</sup> April 11 Filing at 38; *see also id.* & n.72 ("To the extent it is deemed necessary in order to satisfy the requirements for a blanket waiver as described in Section 35.28(d)(2) of the Commission's Regulations, Applicant commits to comply with and be bound by the obligations and procedures applicable to electric utilities under Section 210 of the FPA, provided that the blanket waiver described is limited to the interconnection facilities that qualify for waiver under Order No. 807.").

<sup>32</sup> May 30 Amendment at 2.

<sup>33</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>34</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176; *see also* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 207-212.



Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>35</sup> The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.<sup>36</sup>

19. Carolina Solar represents that Duke Energy owns Piedmont Natural Gas Company, Inc., a natural gas local distribution company.<sup>37</sup> Carolina Solar states that its affiliates Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. operate natural gas local distribution and storage facilities, and its affiliate Duke Energy Indiana, LLC owns coal reserves.<sup>38</sup> Carolina Solar represents that its affiliates own or control through lease agreements a fleet of coal rail cars for private use in connection with the companies' respective coal-fired generation, and its affiliates also own various limited "industry lead rail tracks" that are dedicated for transportation of coal.<sup>39</sup> Carolina Solar's filing includes a list of its affiliated pipelines and storage companies.<sup>40</sup>

20. Finally, Carolina Solar affirmatively states that neither it nor its affiliates have erected barriers to entry into the relevant markets and that they will not erect barriers into such markets.

21. Based on Carolina Solar's representations, we find that it satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

## **B. Affiliate Abuse Analysis**

22. If Carolina Solar is a successful bidder in any of the four tranches of the Duke Utilities' competitive solicitation process, it will enter into a PPA with Duke Carolinas and/or Duke Progress, both affiliates of Carolina Solar. Thus, Carolina Solar requests authorization for affiliate sales pursuant to the RFPs. At issue is whether Carolina Solar

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<sup>35</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447; *see also* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 354, 356.

<sup>36</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

<sup>37</sup> April 11 Filing at 40.

<sup>38</sup> *Id.* at 40 n.79.

<sup>39</sup> *Id.* at 40 n.80.

<sup>40</sup> May 30 Amendment at 2.

satisfies the Commission's concerns regarding the potential for affiliate abuse. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted. Under *Edgar*, the Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.<sup>41</sup>

23. When an entity presents evidence seeking to satisfy the *Edgar* competitive bidding criteria, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.<sup>42</sup>

24. In *Allegheny*, the Commission provided guidance as to how it will evaluate whether a competitive solicitation process satisfies the *Edgar* criteria.<sup>43</sup> As the Commission stated in *Allegheny*, the underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission stated that the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle: (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection.<sup>44</sup> The *Edgar* criteria and *Allegheny* guidelines are designed to ensure that the transactions between affiliates do not unduly favor affiliates, and thereby protect captive customers from affiliate abuse.

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<sup>41</sup> See *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382, at 62,167-69 (1991) (*Edgar*); see also *Connecticut Light & Power Co.*, 90 FERC ¶ 61,195, at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217, at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027, at 61,059-60 (1999).

<sup>42</sup> *Edgar*, 55 FERC at 62,168.

<sup>43</sup> *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*); see also Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 540.

<sup>44</sup> *Allegheny*, 108 FERC ¶ 61,082 at P 22.

25. As discussed below, the Commission concludes that the competitive solicitation process described by Carolina Solar satisfies the Commission's concerns regarding affiliate abuse. Accordingly, the Commission will grant Carolina Solar's request for authorization to make affiliate sales to Duke Carolinas and Duke Progress pursuant to the competitive solicitation process described in the filing. In the event that there are any changes in the facts and circumstances that the Commission is relying upon in granting Carolina Solar waiver of the affiliate restrictions, Carolina Solar must make a change in status filing with the Commission pursuant to 18 C.F.R. section 35.42.<sup>45</sup>

### **1. Transparency Guideline**

26. Carolina Solar represents that the competitive solicitation process satisfies the Transparency guideline because the legislative process, which resulted in HB 589, and the adoption of comprehensive Competitive Procurement of Renewable Energy Rules (CPRE Rules) by the North Carolina Commission provided opportunities for comments with regard to the rules and program guidelines for the solicitations. In addition, all communications regarding the competitive solicitation process must go through the Independent Administrator, preventing any participant from discussing the solicitations with employees of the Duke Utilities. Moreover, all information regarding the RFPs, bid eligibility, the PPAs and RFP milestones are available via the Independent Administrator's website, which is accessible to all interested parties.<sup>46</sup>

27. Based on Carolina Solar's representations, we find that the competitive solicitation process is consistent with the Commission's Transparency guideline.

### **2. Definition Guideline**

28. Carolina Solar represents that the competitive solicitation process satisfies the Definition guideline by clearly describing the renewable energy products sought in the RFPs, which were specified in HB 589. Carolina Solar states that the general terms of the products were widely publicized through the North Carolina Competitive solicitation proceedings and that the specific terms for the sale of these renewable energy products are contained in a standard *pro forma* PPA that was filed with and approved by the North Carolina Commission following a comment period that enabled interested parties to raise any concerns regarding the *pro forma* PPA. Carolina Solar states that the price and non-price criteria under which the bids will be evaluated will be posted to the Independent Administrator's website.<sup>47</sup>

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<sup>45</sup> See also Order No. 652, FERC Stats. & Regs. ¶ 31,175.

<sup>46</sup> April 11 Filing at 45.

<sup>47</sup> *Id.* at 45-46.

29. Based on Carolina Solar's representations, we find that the competitive solicitation process is consistent with the Commission's Definition guideline.

### **3. Evaluation Guideline**

30. Carolina Solar represents that the competitive solicitation process satisfies the Evaluation guideline because the Independent Administrator will administer all aspects of the bidding and the bid evaluation, making its own evaluation and ranking of bids based on the price and non-price factors specified in the final RFP documents available to all bidders.<sup>48</sup> Carolina Solar states that the solicitations will use standardized evaluation criteria that will be applied equally to all bidders and bids, with awards being made pursuant to the stated price and non-price factors. Carolina Solar states that the Independent Administrator has no financial interest in the outcome of the RFPs, or in the Duke Utilities, or in any of the bidders.<sup>49</sup>

31. Based on Carolina Solar's representations, we find that the competitive solicitation process is consistent with the Commission's Evaluation guideline.

### **4. Oversight Guideline**

32. Carolina Solar represents that the competitive solicitation process satisfies the Oversight guideline. Carolina Solar explains that the Independent Administrator, an independent entity with no financial interest in the outcome of the solicitations or any of the bidders, will monitor all phases of the competitive solicitation process and make its own independent evaluation and ranking of bids that are submitted. Carolina Solar also states that the Independent Administrator was approved by the North Carolina Commission with no stakeholder objections and that the RFP results also will be approved by the North Carolina Commission after determining that the procurement was conducted in accordance with the competitive solicitation process and rules. The Duke Utilities are also required to submit a detailed report to the North Carolina Commission following the Tranche 1 solicitation.<sup>50</sup>

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<sup>48</sup> *Id.* at 46; *see also id.* Attachment H, Appendix A, N.C. Commission Rule 8-71(f)(3)(iv), which provides that "the Independent Administrator shall deliver to the Evaluation Team of the public utility the final ranked list of proposals. The electric public utility shall select proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied, and the Independent Administrator shall provide the electric public utility with the identity of the market participants that were so selected."

<sup>49</sup> *Id.* at 46.

<sup>50</sup> *Id.* at 47.

33. Based on Carolina Solar's representations, we find that the competitive solicitation process is consistent with the Commission's Oversight guideline.

**C. Request for Other Duke Affiliates with PPAs**

34. Carolina Solar states that, in the event that other Duke affiliates are awarded PPAs through the same competitive solicitation process, they would need the same authorization that Carolina Solar seeks in the instant case. To avoid numerous and essentially identical applications, Carolina Solar requests that the Commission rule that other Duke affiliates that are awarded a PPA through the Duke Utilities' competitive solicitation process may replicate the tariff provisions proposed in the instant application.<sup>51</sup> Carolina Solar commits that any Duke affiliate awarded a PPA would submit for filing a proposed tariff that will include the same provisions that the Commission approves in this docket.

35. We deny Carolina Solar's request and will require other Duke affiliates that seek to participate in the Duke Utilities' solicitations to submit an application supporting any such requests. We will not grant blanket approval for all Duke affiliates to include similar tariff provisions; each application will be reviewed independently and consistent with Commission precedent. To the extent that an applicant wishes to point to this order

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<sup>51</sup> Carolina Solar's proposed tariff provision lifting the restriction on market-based rate sales in the Duke Utilities' balancing authority areas provides:

b. North Carolina Renewable Energy Solicitation: The Commission granted Seller the authority to make sales of renewable energy at market-based rates to Duke Energy Carolinas, LLC within the Duke Energy Carolinas, LLC balancing authority area and to Progress Energy Carolinas, LLC within the Progress Energy Carolinas, LLC east and west balancing authority areas solely to the extent that such sales are made pursuant to the rates and terms set out in one or more power purchase agreements ("PPAs") that were entered into pursuant to and in accordance with the renewable energy competitive procurement program provided for under North Carolina House Bill 589, codified at North Carolina G.S. 62-110.8, as implemented in accordance with the Competitive Procurement of Renewable Energy rules ("CPRE Rules") adopted by the North Carolina Utilities Commission in Docket No. E-100, Sub 150; provided that any PPAs covered by this provision must (i) be awarded during the 45-month solicitation period commencing February 21, 2018, as such period may be extended by the NCUC, and (ii) be within the 30% limitation on PPAs that may be awarded to Seller or its affiliates, as such limitations are established in the CPRE Rules and Orders of the NCUC. *See Carolina Solar Power, LLC*, Docket No. ER18-1343.

regarding the Commission's decision with respect to Carolina Solar, such application should discuss whether there have been any changes to the competitive solicitation process or any other facts relied upon by the Commission in granting Carolina Solar waiver of the affiliate restrictions and restrictions against market-based rate sales in the Duke Utilities' balancing authority areas.<sup>52</sup>

**D. Other Waivers, Approvals, and Authorizations**

36. Carolina Solar requests the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101,<sup>53</sup> and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA<sup>54</sup> and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

37. We will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.<sup>55</sup> Notwithstanding the

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<sup>52</sup> Any change to the competitive solicitation process after an approval to make affiliate sales would necessitate a notice of change in status filing. *See* 18 C.F.R. § 35.42; *see also* Order No. 652, FERC Stats. & Regs. ¶ 31,175.

<sup>53</sup> The Commission notes that, although Carolina Solar did not include in its transmittal letter the phrase "with the exception of the provisions of Part 101 that apply to hydropower licensees with respect to licensed hydropower projects," the phrase is appropriately included in its proposed market-based rate tariff.

<sup>54</sup> 16 U.S.C. § 824c (2012).

<sup>55</sup> We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities in Part 34 of the Commission's regulations. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 345-350; *Seneca Gen., LLC*,

waiver of the accounting and reporting requirements, we expect Carolina Solar to keep its accounting records in accordance with generally accepted accounting principles.

### **E. Reporting Requirements**

38. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order No. 2001<sup>56</sup> and Order No. 768,<sup>57</sup> to fulfill its responsibility under FPA section 205(c)<sup>58</sup> to have rates on file in a convenient form and place.<sup>59</sup> Carolina Solar must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>60</sup> Failure to timely and accurately file an EQR is a violation of the Commission's regulations for

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145 FERC ¶ 61,096, at P 23 n.20 (2013) (citing *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that “all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA”)).

<sup>56</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

<sup>57</sup> *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>58</sup> 16 U.S.C. § 824d(c) (2012).

<sup>59</sup> *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

<sup>60</sup> Order No. 770, FERC Stats. & Regs. ¶ 31,338.

which Carolina Solar may be subject to refund, civil penalties, and/or revocation of market-based rate authority.<sup>61</sup>

39. Additionally, Carolina Solar must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>62</sup>

40. In Order No. 697, the Commission created two categories of sellers.<sup>63</sup> Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888<sup>64</sup>); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.<sup>65</sup> Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.<sup>66</sup>

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<sup>61</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2017). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>62</sup> 18 C.F.R. § 35.42 (2017); *see also* Order No. 652, FERC Stats. & Regs. ¶ 31,175.

<sup>63</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>64</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>65</sup> 18 C.F.R. § 35.36(a) (2017).

<sup>66</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.



41. Carolina Solar represents that it is a Category 2 seller in the Southeast region. Carolina Solar represents that it meets the requirements for a Category 1 seller in the Central, Southwest, Southwest Power Pool, Northeast, and Northwest regions because: (i) Carolina Solar and its affiliates own or control less than 500 MW of generation in each of these respective regions; (ii) Carolina Solar does not own, operate or control any transmission facilities in any of these regions; (iii) Carolina Solar is not affiliated with a franchised public utility in these regions; and (iv) Carolina Solar does not raise any other vertical market power issues in these regions.

42. Based on Carolina Solar's representations, we designate Carolina Solar as a Category 2 seller in the Southeast region, and a Category 1 seller in the Central, Southwest, Southwest Power Pool, Northeast, and Northwest regions. Carolina Solar must file an updated market power analysis for the Southeast region in compliance with the regional reporting schedule adopted in Order No. 697.<sup>67</sup> The Commission also reserves the right to require such an analysis at any time for any region.<sup>68</sup>

43. This order satisfies the requirement that Carolina Solar must first receive Commission authorization, pursuant to section 205 of the FPA, before engaging in power sales at market-based rates for the instant affiliate sales. We note that Carolina Solar must receive prior approval from the Commission under section 205 of the FPA for any other sales to affiliates with a franchised electric service territory and captive customers.<sup>69</sup>

The Commission orders:

(A) Carolina Solar's market-based rate tariff is hereby accepted for filing, effective June 11, 2018, as discussed in the body of this order.

(B) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.

(C) Waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.* P 853.

<sup>69</sup> See *San Diego Gas & Electric Co.*, 164 FERC ¶ 61,011, at P 21 (2018) (citing 18 C.F.R. § 35.39(b)).

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Carolina Solar is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Carolina Solar, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Carolina Solar's issuance of securities or assumptions of liability.

(F) Carolina Solar is hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of Carolina Solar's market-based rate tariff falls within a quarter of the year that has already expired, Carolina Solar's EQRs for the expired quarter are due within 30 days of the date of this order.

(G) Carolina Solar's request for authorization to make affiliate sales at market-based rates to the Duke Utilities pursuant to the competitive solicitation process described in its filing is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.